

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. BROWN,	§
	§
Defendant Below-	§ No. 235, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0002006181
Plaintiff Below-	§
Appellee.	§

Submitted: August 20, 2010
Decided: October 25, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 25th day of October 2010, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Frederick Brown, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Brown's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Brown pled guilty in July 2000 to one count of second degree rape of a victim under the age of 16. After ordering a psychological evaluation, the Superior Court sentenced Brown to twenty

years at Level V incarceration to be suspended after serving a ten-year mandatory term of imprisonment for decreasing levels of supervision. Among other conditions of his sentence, Brown was ordered to have no unsupervised contact with any child under the age of eighteen. Brown did not appeal his conviction or sentence.

(3) Brown's present appeal is from the Superior Court's April 2010 sentence following a hearing at which Brown was found to have violated the conditions of his probation. The Superior Court revoked Brown's probation and sentenced him to serve ten years at Level V incarceration. In his opening brief on appeal, Brown asserts that the evidence presented at the hearing was insufficient to find him in violation of the terms of his probation. He contends that the only evidence was the hearsay testimony of his probation officer. He contends that there was no medical evidence to prove that he had overdosed on alcohol, no evidence to prove that he was not taking his psychiatric medications as prescribed, and no evidence that he had had unsupervised contact with this girlfriend's minor daughter. Finally, Brown asserts that the Superior Court's sentence was excessive given that Brown was charged only with administrative violations of his probation, not new criminal conduct.

(4) We find no merit to Brown’s contentions. In a VOP hearing, unlike a criminal trial, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.¹ A preponderance of evidence means “some competent evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”² Furthermore, the rules of evidence are relaxed in a VOP hearing, and hearsay evidence is admissible.³ Thus, we find no merit to Brown’s objections to his probation officer’s hearsay testimony.

(5) Moreover, Brown’s probation officer testified about her personal knowledge that Brown was not taking his required medications as prescribed. The GPS monitor Brown was required to wear placed him at the home of his girlfriend’s daughter on the night he was arrested. The probation officer interviewed the girl who admitted that Brown had visited her on at least two occasions. We conclude that the evidence was more than sufficient to establish Brown’s VOP by a preponderance of the evidence.

(6) Brown’s final argument is that the Superior Court’s sentence was excessive given that Brown had not been charged with any new criminal

¹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

² *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

³ *Id.*

conduct. This Court's appellate review of a sentence is extremely limited, however, and generally ends upon a determination that the sentence is within the statutory limits prescribed by the legislature.⁴ In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.⁵ In this case, Brown originally was sentenced to a twenty-year term of imprisonment, to be suspended after serving ten years. Accordingly, the Superior Court's ten-year sentence of imprisonment for Brown's VOP reflected the amount of Level V time remaining to be served on Brown's original sentence and thus was authorized by law and was neither arbitrary nor excessive.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

⁵ 11 Del. C. § 4334(c).